

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Introduced**

## **Senate Bill 142**

BY SENATOR SYPOLT

[Introduced January 10, 2018; Referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §62-3-3 of the Code of West Virginia, 1931, as amended, relating  
 2 to changing number of strikes in jury selection in felony cases to provide four strikes each  
 3 to the accused and the prosecution; and setting forth the order the strikes are to be taken.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 3. TRIAL OF CRIMINAL CASES.**

**§62-3-3. Selection of jury in felony cases; striking jurors; alternate jurors.**

1 In a case of felony, twenty jurors shall be drawn from those in attendance for the trial of  
 2 the accused. If a sufficient number of jurors ~~for such panel~~ cannot be procured in this way, the  
 3 court shall order others to be forthwith summoned and selected until a panel of twenty jurors, free  
 4 from exception, ~~be completed, from which~~ is complete. From this panel the accused may strike  
 5 off ~~six~~ four jurors and the prosecuting attorney may strike off ~~two~~ four jurors. The prosecuting  
 6 attorney ~~shall first strike off two jurors, and then the accused six~~ first strikes off one juror then the  
 7 accused strikes off one juror. The parties continue in this manner until all strikes have been used.  
 8 If the accused ~~failed~~ fails to strike ~~from such panel~~ the number of jurors this section allows, ~~him~~  
 9 ~~to strike~~ the number not stricken off by him or her shall be stricken off by the prosecuting attorney  
 10 ~~so as to reduce the panel to twelve. who shall compose the jury for the trial of the case~~ This panel  
 11 composes the regular jury for trial of the case.

12 Whenever ~~in the opinion of the court~~ is of the opinion that the trial ~~is likely to be a~~ may be  
 13 a protracted one, ~~the court it~~ may direct ~~that not more than~~ up to four jurors, in addition to the  
 14 regular jury, be called and ~~impaneled to sit~~ impaneled as alternate jurors. Alternate jurors, in the  
 15 order in which they are called, shall replace jurors who, prior to the time the jury retires to consider  
 16 its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn  
 17 in the same manner, ~~shall~~ have the same qualifications, ~~shall~~ be subject to the same examination  
 18 and challenges, ~~shall~~ take the same oath and ~~shall~~ have the same functions, powers, facilities  
 19 and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall  
 20 be discharged after the jury retires to consider its verdict. Each side is entitled to one peremptory

- 21 challenge in addition to those otherwise allowed by law if one or two alternate jurors are ~~to be~~  
22 impaneled and two peremptory challenges if three or four alternate jurors are ~~to be~~ impaneled.  
23 The additional peremptory challenges may be used against an alternate juror only and the other  
24 peremptory challenges allowed by this section may not be used against an alternate juror.

NOTE: The purpose of this bill is to decrease number of strikes a defendant has in a criminal proceeding from six to four from a panel of potential jurors. The bill increases the number of strikes the prosecution has from two to four. The bill also sets forth the order the strikes are to be taken.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.